

SERVED: February 25, 1999

NTSB Order No. EA-4746

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 25th day of February, 1999

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15007
v.)	
)	
DOUGLAS E. HAYNES,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION OF GRANT OF STAY

The Administrator has requested reconsideration of the stay of NTSB Orders EA-4690 and 4722, served December 22, 1998, pending disposition of a petition for review of those orders to be filed in the U.S. Court of Appeals.¹ Respondent opposes the request. The request is denied.

The order granting the stay, EA-4734 (served December 22, 1998), noted that the substantive decision by the law judge was reached without respondent appearing. The Administrator argues that there was a hearing in which she introduced substantial evidence to show serious violations dictating the denial of a stay, and that the decision to grant one will send the message to respondents that if they avoid the hearing they will get a stay. The Administrator also argues that citation to Administrator v.

¹ In EA-4690, the Board affirmed a 180-day suspension of respondent's airman certificate for an improper passenger-carrying operation. In EA-4722, the Board denied respondent's petition for reconsideration.

Coombs, NTSB Order No. EA-3750 (1992), is inapposite.

The Administrator charged respondent with failing to have the necessary certificates, ratings, testing, or competency and flight proficiency checks to act as pilot-in-command of a passenger-carrying Part 135 flight. While there is no doubt this was a significant safety violation, the proof related to but one flight. Other information offered in evidence regarding that flight (to the effect that respondent operated unsafely) was not relevant to the charges in the complaint, not the subject of any findings of fact by the law judge, and inappropriate to take into consideration or rely on in acting on the stay.

The Board's policy on stays in the case of suspensions of 180 days or more is to review the stay issues case-by-case. Coombs, a revocation case, suggests an important factor in the analysis should be the existence of a hearing on the merits. A natural extension of that rationale would be consideration, in addition to the seriousness of the violations, of any procedural issues that might have affected the reliability of the findings. Here, respondent did not attend the hearing, giving late and insufficient notice of his alleged inability to attend. Obviously, this affected the quality of the factual hearing before the law judge. Even without consideration of the procedural footing of the case, the law judge's findings relate to a single incident.

As to the Administrator's claim that this ruling will lead serious violators not to appear at hearings, suffice it to say that this case is fairly unique. Respondent alleges that he was in custody at the time of hearing, a condition other respondents are unlikely to enter into voluntarily, simply to improve the posture of their enforcement case.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition for reconsideration is denied.

Daniel D. Campbell
General Counsel